



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Maintenance Company

File: B-228396.7

Date: June 22, 1990

Arthur P. Williams, Esq., Murphy & Murphy, for the
protester.

Millard F. Pippin, Department of the Air Force, for the
agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest allegation that agency solicited in bad faith a
proposal for extension of firm's contract, filed five months
after basis of protest was known, is untimely.

DECISION

American Maintenance Company protests the Department of the
Air Force's decision to award a cleaning services contract
under request for technical proposals (RFTP) No. F08650-87-
R-0020, rather than extend its contract. Specifically
American complains that the Air Force solicited in bad faith
a proposal for an extension of its contract when the Air
Force never had any intention of extending the contract.^{1/}

We dismiss the protest.

American was the incumbent contractor for cleaning services
at Cape Canaveral Air Force Station from August 1, 1985 to
September 30, 1987. On September 14, 1987, the Air Force
issued the RFTP. This solicitation was restricted to small
disadvantaged businesses (SDBs). American, which is not an
SDB, was thus excluded from this competition. The RFTP also
included a "Delay in Award of Contract" clause which
provided, in pertinent part, that the basic contract period
would commence in fiscal year 1988, that is, by

^{1/} We base our decision entirely on the facts as reported by
the protester.

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September 30, 1988, provided at the time of proposed award there was a minimum of 3 months remaining in fiscal year 1988. This effectively meant that contract award had to be made by July 1 or else only phase-in operations could begin prior to October 1, 1988.

While the new procurement was being conducted, American's contract was extended on a month-to-month basis. American's latest extension was to expire on July 31, 1988. On July 11, the Air Force issued to American a request for a proposal to extend American's contract for the months of August and September. American prepared an offer and negotiations were conducted. On July 27, 1988, the Air Force advised American that a contract had been awarded to Unified Systems, Inc., an SDB, under the RFTP. American protested to the Air Force the failure to further extend its contract. American argued that the award presumably was made after July 1 and did not comply with the delay in award clause in the RFTP. After being advised that award was made prior to July 1, American withdrew its protest.

Six months later, by letter dated February 6, 1989, the protester filed a Freedom of Information Act (FOIA) request for information concerning the contract award to Unified. In November 1989, American received a copy of the Unified contract in response to its FOIA request. American found that the contract had been executed by the contracting officer on July 14, 1988, and that the delay in contract award clause had been deleted from the solicitation. American filed its protest with our Office on April 6, 1990, based upon the FOIA information it received in November.

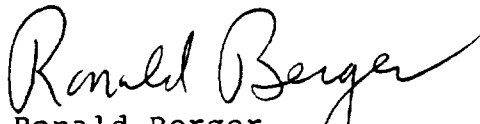
American asserts that the agency deceived the firm as to when the Unified contract was executed and that the agency did not negotiate in good faith with American with regard to the contract extension. American seeks its costs of negotiating the extension which was not executed.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), protests must be filed no later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. Here, American knew its basis of protest concerning the agency's alleged improper conduct, at the latest, in November 1989. It did not file its protest with our Office until April 9, 1990, five months later. Thus, American's protest is untimely.

American argues that, if we find that its protest is untimely, we should consider it under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(b).

However, we apply this exception sparingly. Macroeconomic Applications, Inc.--Reconsideration, B-229749.3, Apr. 26, 1988, 88-1 CPD ¶ 404. In our view, this protest does not fall under this exception.

Accordingly, the protest is dismissed.


Ronald Berger
Associate General Counsel